

<b>SENTENCING COMMISSION</b>
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<b>MINUTES</b>
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<b>Committee:</b>	<b>SENTENCING COMMISSION MEETING</b>
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<b>Date:</b>	Wednesday, November 3, 2004	<b>Time:</b>	12:00pm-2:00pm	<b>Place:</b>	State Capitol Complex East Wing
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<b>Members Present</b>	Paul Boyden, Scott Carver, Blake Chard, K.S. Cornaby, Scott Daniels, Marlene Gonzalez, John Hill, Jim Marchel, Judge Paul Maughan, Rep. Ty McCartney, Judge Gregory K. Orme, Kathy Reimherr, Mike Sibbett, Kirk Torgenson
<b>Members Excused</b>	Sheriff Phil Barney, Senator Gregory Bell, Judge Jeffrey Burbank, Judge Terry Christiansen, Calvin Clegg, Senator Mike Dmitrich, Ed McConkie, G. Fred Metos, Brian Namba, Chief Ed Rhoades, Sy Snarr, Rep. Mike Thompson, Judge Robert S. Yeates
<b>Staff</b>	Julie Christenson, Ron Gordon, Mike Haddon, Jo Lynn Kruse

<b>Visitors</b>	Rep. Litvack, Chris Mitchell, Cliff Butter
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<b>Agenda Item:</b>	<b>Welcome and Approval of Minutes</b>
Notes:	Kay Cornaby called the meeting to order and recognized our guest Rep. Litvack. Mike Sibbett made the <b>motion</b> to approve the October minutes. Kirk Torgensen <b>seconded</b> the motion and it <b>passed unanimously</b> .

<b>Agenda Item:</b>	<b>Hate Crimes Legislation – Rep. Litvack</b>
Notes:	Rep. David Litvack is continuing the work of late Senator Pete Suazo concerning hate crimes legislation. Our state averages sixty hate crimes per year. A hate crime happened just this last week when someone painted a swastika on a Jewish couple's vehicle. One reason the legislation failed in the past is because of the list of group classifications includes sexual orientation. Another reason is the fiscal note. Rep. Litvack and Sen. James Evans have put together a draft which includes the words "not limited to" in reference to the listed groups. Under this bill, those convicted of hate crimes would have their sentences enhanced by one step. Rep. Ty McCartney made the <b>motion</b> to support this concept. Mike Sibbett <b>seconded</b> the motion and it <b>passed unanimously</b> .

<b>Agenda Item:</b>	<b>Adult Guidelines Revision Subcommittee Report – Chris Mitchell</b>
Notes:	<p>The Adult Guidelines Revision Subcommittee recommends the following changes to the Adult Sentencing and Release Guidelines:</p> <ol style="list-style-type: none"> <li>1. Add columns for third degree felony drug possession and second degree felony drug possession to the general felony matrix. Mike Sibbett made the <b>motion</b> to adopt this proposal by modifying the last 3<sup>rd</sup> degree column to read 8, 10, 12, 16, 18 from the bottom up. Paul Boyden <b>seconded</b> the motion and it <b>passed unanimously</b>.</li> <li>2. Amend the criminal history scoring so that drug possession felonies receive fewer points and amend the criminal history assessment so that it is based solely on prior convictions and adjudications. Mike Sibbett made the <b>motion</b> to request the subcommittee continue to explore these two concepts and requested additional research on drug possession offenders in prison. Judge Orme <b>seconded</b> the motion and it <b>passed unanimously</b>.</li> </ol>

<b>Agenda Item:</b>	<b>Juvenile Justice Subcommittee Report – Ron Gordon</b>
Notes:	<p>The subcommittee reviewed the list of aggravating and mitigating factors and determined that many of them are used infrequently with the category “other” used the most. The Subcommittee tried to make the factors more relevant to those making recommendations to juvenile court and juvenile court judges. Ultimately, the Subcommittee weeded out a couple of factors that are rarely if ever used and then simplified the aggravating and mitigating factors by combining similar ones. There are three factors that are entirely new. Gang involvement is new in the aggravating factors. In the mitigating factors, age and maturity of the offender is new as well as current status at time of offense. Judge Orme made the <b>motion</b> to adopt the new document and strike “at time of offense” from mitigating factor number five. Judge Maughan <b>seconded</b> the motion and it <b>passed unanimously</b>.</p>

<b>Agenda Item:</b>	<b>Restitution – Draft Legislation – Ron Gordon</b>
Notes:	<p>Ron Gordon handed out two drafts dealing with criminal restitution amendments. The first draft incorporates suggestions made at the October Sentencing Commission meeting. The second draft came out of an ad hoc working group, a conference committee, because the suggestions in the first draft were not well received some of the other players. The draft 10/14/04 states that: (1) The district court shall have exclusive and continuing jurisdiction to (a) determine complete restitution and court-ordered restitution; and (b) order restitution; and (2) The court shall determine complete restitution and court-ordered restitution and make all restitution orders within 180 days after sentencing unless the court finds that the interests of justice would best be served by delaying the determination or order of restitution and states on the record the reasons justifying the delay. The rest of the amendments are striking language from the Board of Pardons and Parole statute where they are authorized to order restitution, because under this bill, BOP does not order restitution; only the district court orders restitution and does so within 180 days. The Victims Council had concerns with this because it could leave victims left out in the cold, not</p>

	<p>having the opportunity to have somebody order restitution. The judiciary had some concerns about it as well.</p> <p>The draft dated 10/27/04 states that the district court has jurisdiction over restitution for one year following sentencing. After that time, the BOP has jurisdiction over restitution. Mike Sibbett made the <b>motion</b> to adopt the 10/27 draft with the following minor changes: On page 1, line 22, change “shall” to “may” and note the typo on page 3, line 137 should say <u>one</u> year after sentencing. Blake Chard <b>seconded</b> the motion. Judge Orme asked to add to lines 177 and 178 the language “at time of sentencing whenever feasible.” Mike Sibbett <b>amended</b> his <b>motion</b> to include Judge Orme’s remarks. Blake Chard <b>seconded</b>. The motion <b>passed unanimously</b>.</p>
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<b>Agenda Item:</b>	<b>Proposed Changes to Rule of Criminal Procedure 12 – Ron Gordon</b>
Notes:	The Commission discussed a proposed rule change which provides that a motion for a reduction under 76-3-402 may be filed at any time after sentencing. This statute gives the district court authority to reduce a conviction one level if the court understands the nature and circumstances of the offense, and conclude that it is unduly harsh, they can lower it. The Commission takes no position on this issue.

**The next meeting is our Annual Meeting, scheduled for Wednesday, April 6, 2005**

**Minutes prepared by Jo Lynn Kruse - Executive Secretary, CCJJ**